

# 2015 Clerks of Circuit Court Conference

UPDATES FROM THE DIVISION OF STATE COURT ADMINISTRATION

TRIAL COURT MANAGEMENT

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## Changes to the expungement statute IC 35-38-9

- ▶ XP case type
- ▶ Civil filing fee except for petitions filed under IC 35-38-9-1
- ▶ Confidentiality changes
  - ▶ The case file and documents are not confidential at filing
  - ▶ Hearings are open
  - ▶ If petition is granted, entire XP case and all documents filed in the XP case become confidential
  - ▶ If petition is denied, XP case remains available to the public

## Changes to the expungement statute IC 35-38-9

- ▶ “Section 1” expungements (petitions granted under IC 35-38-9-1)
- ▶ XP case type
- ▶ No filing fee
- ▶ New statutory requirements for information that must be included in the petition and order
  - ▶ To help BMV and DOC match the court records
- ▶ If granted, trial court records shall be permanently sealed

## Changes to the expungement statute IC 35-38-9

- ▶ “Section 6” expungements (petitions granted under IC 35-38-9-6)
- ▶ Misdemeanors and D or Level 6 felonies reduced to misdemeanors plus D or Level 6 felonies not resulting in bodily injury
- ▶ XP case type
- ▶ Civil filing fee – may be waived for indigency
- ▶ New statutory requirements for information that must be included in the petition and order
  - ▶ To help BMV and DOC match the court records
- ▶ If granted, trial court records are permanently sealed
  - ▶ The electronic and paper records are not available to the public

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## Changes to the expungement statute IC 35-38-9

- ▶ “Section 7” expungements (petitions granted under IC 35-38-9-7)
- ▶ All non excluded felonies not resulting in serious bodily injury (IC 35-38-9-4) and all other non excluded felonies with consent of the prosecutor (IC 35-38-9-5)
- ▶ XP case type
- ▶ Civil filing fee – may be waived for indigency
- ▶ New statutory requirements for information that must be included in the petition and order
  - ▶ To help BMV and DOC match the court records
- ▶ If granted, trial court records are marked EXPUNGED but still available to the public

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## Changes to the expungement statute IC 35-38-9

- ▶ Request from the Court of Appeals and Supreme Court
  - ▶ Petitioner is required to include appellate case number in the expungement petition
  - ▶ Please only send copies of the Order to the upper courts if they ever had the underlying criminal case
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## Payment of certified/registered mailing costs

IC 33-32-2-10 effective July 1, 2015

- ▶ Defines "initial mailing" as the service of the complaint, pleading, etc. at the commencement of the action.
  - ▶ Does not include any subsequent service including service on a party that should have been served at the commencement of the action.
- ▶ Defines "registered or certified mail" as any means of delivery that provides a return receipt.

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## Payment of certified/registered mailing costs

IC 33-32-2-10 effective July 1, 2015

- ▶ Whenever Clerk is required to send registered or certified mail
    - ▶ The initial mailing
    - ▶ Sent to not more than two parties
    - ▶ to only one address for each party
    - ▶ Is paid from the filing fee
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## Payment of certified/registered mailing costs

IC 33-32-2-10 effective July 1, 2015

- ▶ After the initial mailing, or for each additional person
- ▶ whenever Clerk is required to send registered or certified mail
  - ▶ The person requesting service must provide the Clerk with
  - ▶ An envelope with sufficient postage affixed, addressed to the recipient with the Clerk's address as the return address
  - ▶ The USPS form or other forms for registered or certified mail. The return receipt must be completed so the Clerk gets the return receipt
  - ▶ The USPS fee or other fee for the service by registered or certified mail
- ▶ The Clerk may not collect any additional fees for mailing

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## Payment of certified/registered mailing costs

IC 33-32-2-10 effective July 1, 2015

- ▶ Is there a practical way to do this?

## Sheriff service of process fee IC 33-37-5-15 effective July 1, 2015

- ▶ Fee increases to \$25 (from \$13)
- ▶ May be collected only one time per case (not one time per party)
- ▶ Sheriff may collect one additional \$25 service of process fee for post judgment service
- ▶ If court issues a fee waiver, all fees under IC 33-37 are waived. This includes the sheriff service of process fee.

## Release of judgment Trial Rule 58(D) and Small Claims Rule 11(d) effective July 1, 2015

- ▶ The rule allows the Clerk to send Notice to judgment creditor if the clerk records show the judgment plus interest and court costs, has been paid
- ▶ The rule requires the Clerk to send Notice to judgment creditor if judgment debtor has sent a verified request that notice be sent to creditor
- ▶ A form notice is available on the Supreme Court website
- ▶ The Notice requires judgment creditor to respond within 30 days with either a satisfaction or a verified objection
- ▶ If judgment creditor fails to respond, the judgment is deemed satisfied and Clerk shall note the satisfaction/release on the CCS and in the judgment docket book

## Guardianship case numbers Administrative Rule 1(B)(4) effective July 1, 2015

- ▶ One GU case number per incapacitated person
- ▶ Probate filing fees are required for guardianship cases
- ▶ If a guardianship is sought for certain related persons, all but one filing fee must be waived by the court
  - ▶ 2 or more minors or incapacitated persons who are children of a common parent
  - ▶ A parent and child
  - ▶ A husband and wife

## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ The list of confidential records in 9(G) was deleted
  - ▶ This does not mean these records are now open to the public
  - ▶ Now the filer must determine the basis for confidentiality

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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Separate Written Notice required when confidential records are filed
    - ▶ The form is available at <http://www.in.gov/judiciary/4235.htm>
    - ▶ if entire case is confidential, no written notice is needed
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Separate Written Notice required when confidential records are filed
    - ▶ Merely filing a document on green paper no longer satisfies the notice requirement
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Separate Written Notice required when confidential records are tendered during hearing or trial
  - ▶ The form is available at  
<http://www.in.gov/judiciary/4235.htm>

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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Separate Written Notice requires the filer to specifically identify the law, statute or rule that makes the information confidential
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Oral Testimony
    - ▶ During hearing/trial
    - ▶ If confidential information is disclosed, notice must be given to Court Reporter that the info must be excluded and specific grounds for the exclusion
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Oral Testimony
    - ▶ After hearing/trial
    - ▶ If notice not given during hearing/trial, any party/person may provide written notice to the Court Reporter stating the confidential information must be excluded pursuant to Appellate Rules 28(A)(9)(C) or (D)
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Green Paper Requirements:
  - ▶ If only a portion of a document is confidential
    - ▶ Supply Court with
      - ▶ New Notice Form (white paper)
      - ▶ Public Access Version (redacted on white paper)
      - ▶ Non-public Access Version (green paper)
  - ▶ Unless-----

## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Green Paper Requirements:
  - ▶ If only a portion of a document is confidential but the confidential info is **not relevant to any issue** in the case
    - ▶ Supply Court with
      - ▶ Public Access Version (redacted on white paper) only

## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Green Paper Requirements:
  - ▶ If entire document is confidential
    - ▶ Supply Court with
      - ▶ New Notice Form (white paper)
      - ▶ Non-public Access Version (green paper)

## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Improper Filing of Documents on Green Paper
  - ▶ If a court determines a document has improperly been filed on green paper it must provide notice to all parties
  - ▶ The improperly filed record will be made available to the public in seven days
  - ▶ Unless -----

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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ Improper Filing of Documents on Green Paper
  - ▶ The person affected by the release of the record begins the process of properly excluding it pursuant to 9(G)(4)

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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ The failure to comply with 9(G) can subject counsel or a party to sanctions. Admin. R. 9(G)(6)(d).
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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ How to exclude info when no statute or rule makes it confidential
  - ▶ Don't file it
  - ▶ Parties agreements don't work

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## Changes to Administrative Rule 9 effective January 1, 2015

- ▶ How to exclude info when no statute or rule makes it confidential
    - ▶ Two ways:
      - ▶ Admin. R. 9(G)(4) or
      - ▶ IC 5-14-3-5.5 (APRA)
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## Out of State Subpoena IC 34-44.5-1-1

- ▶ Clerk has no discretion on whether to issue the Indiana subpoena
- ▶ Clerk may open a CB case (no filing fees) if clerk wants a record of the subpoena in the case management system
- ▶ If the court is ultimately involved with the subpoena (motion to quash or motion to modify) then clerk must open MI case and assess regular civil filing fees
- ▶ Sheriff service fee would apply (IC 33-37-5-15)
  - ▶ Fee is \$25 if requester has not opened a civil action in a foreign court
  - ▶ Fee is \$60 if requester has opened a civil action in a foreign court

## “Foreign” Judgments

- ▶ Two ways to handle, depending on type of “foreign” judgment
- ▶ Recording judgments from other Indiana counties
  - ▶ Open a CB case type, no filing fee but assess the \$3 recording fee (IC 33-37-5-4)
  - ▶ If creditor seeks to execute on this judgment, then open MI case and assess regular civil filing fees
- ▶ Recording judgments from courts outside of Indiana
  - ▶ IC 34-54-11-1 and IC 34-54-11-3
  - ▶ Open MI case and assess regular civil filing fees

## Late Payment Fee IC 33-37-5-22

- ▶ \$25 fee may only be assessed if
- ▶ A Local rule allows this fee
- ▶ Defendant is required to pay court costs including fees/fines/penalties
  - ▶ A defendant found indigent cannot be required to pay this fee
- ▶ The defendant must have been found to have committed a crime, violated a statute or violated an ordinance or committed a delinquent act or a default judgment must have been entered.
  - ▶ The fee cannot be assessed on failure to pay cases (there hasn't been a judgment)
- ▶ Defendant fails to pay in full before later of end of business day on day court enters conviction/judgment OR end of period specified for payment of court costs/fees/penalties under local court rules

## Special Death Benefit Fee IC 35-33-8-3.2

- ▶ \$5 fee only collected from deposits meant to ensure defendant appears in court in a criminal action
- ▶ Cannot be collected from real estate bonds
- ▶ May be collected by sheriff if this is authorized by the clerk
- ▶ If clerk collects, it is distributed semi-annually to the Trustees of the Indiana Public Retirement System
- ▶ If sheriff collects, it is distributed monthly to county auditor

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## Bond Administration fee IC 35-33-8-3.2

- ▶ 10% of monetary value of the bond or \$50, whichever is less, may be retained from all deposits meant to ensure defendant appears in court in a criminal action
  - ▶ Cannot be collected from real estate bonds
  - ▶ The fee may be retained at any time during the case
  - ▶ There is no requirement of a conviction
  - ▶ Deposited to county general fund
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